



## RAVALLI COUNTY ATTORNEY

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RECEIVED

MAY 14 2007

Ravalli County Commissioners

TO: Jo Anne Johnson, Treasurer  
CC: Board of County Commissioners

FROM: Alex Beal, Deputy *AB*

DATE: May 14, 2007

RE: Request for Legal Opinion on BlackRock Investments  
Letter/Clarification of your Investment Authority

Dear Ms. Johnson:

You have asked the County Attorney's Office for a legal opinion concerning your authority to delegate investment authority to outside entities. Our February 20, 2007 letter referenced two potentially interacting statutes, MCA § 7-6-2701 and 72-30-205 (2005). § 7-6-2701 deals specifically with investing county funds in registered warrants, while § 72-30-205 relates to investing in endowments funds.

Neither §§ 7-6-2701 nor 72-30-205 require that county money be invested in warrants or endowment funds. Additionally, they are not the only statutes that control the investment authority of county funds.

§§ 7-6-201, -202, and -206 apply as well. § 7-6-201 requires that (subject to certain exceptions) the county treasurer place all monies "in any solvent banks, building and loan associations, savings and loan associations, or credit unions located in [Ravalli County]...and no other." § 7-6-202 limits which types of United States obligations can be purchased. § 7-6-206 allows County money to be invested in time or savings deposits from Montana financial institutions.<sup>1</sup> Additionally, the Montana Attorney General has opined that -202 compliant Federal obligations may be purchased through mutual funds, though mutual funds are not otherwise allowable. See 44 Mt. Atty. Gen. Op. 22. (1991). While the statute does not specifically allow the County to do so using out-of-state, or even out-of-county financial institutions, the Attorney General has also stated that there is "no express or implied limitation on the treasurer's ability to utilize the services of an

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<sup>1</sup> Harold Blattie of MACo notes that most counties bid re-purchase agreements wherein the checking account is swept nightly into an interest bearing account meeting all statutory requirements.

investment company for the purposes of buying those [allowable] securities.” 42 Mt. Atty Gen. Op. 25, p. 5 (1989). However, the authority to use investment companies extends only those securities authorized by § 7-6-202.

Additionally, § 17-6-204 allows the County to “deposit” money with the state treasurer “for investment under the direction of the board of investments as part of the pooled investment fund.” This set of statutes, MCA § 17-6-201 et seq. allows the County to pool its invest money with the State.

Also noteworthy, § 7-6-201 states that “no deposit of funds shall be made...until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer.” This language requires that investment in local financial institutions be pre-approved by the Board of County Commissioners. §§ 7-6-202 and -206 require investments made pursuant to them to be initiated by the Board of County Commissioners.

Read together, these statutes allow you to:

- Invest county monies in time or savings deposits with local financial institutions, or State banks if they provide a better rate of return. These financial institutions must first have been approved by the Board of County Commissioners;
- Ask the Board of County Commissioners to purchase those Federal obligations allowed by § 7-6-202;
- Ask the Board of County Commissioners to direct you to place the money with the State, which has more options in which to invest the money than does Ravalli County; and
- Ask the Board of County Commissioners to direct you to purchase the warrants of entities located in Ravalli County (as set out by § 7-6-2701).

Therefore, it is the opinion of the Ravalli County Attorney’s Office that all County monies must be invested in local banks unless an exception exists. The exceptions allow for investment in Federal obligations through local or national institutions; allow for investment in Montana banks outside Ravalli County for certificates of deposit or repurchase agreements only if the rate of return exceeds what is available in Ravalli County; allow for the purchase of local government warrants; and allow for investment in the State-pooled investment fund; and allow for investment into an endowment fund. Investment is not allowed in any other type of vehicle. **All of these options involve either pre-approval or outright direction from the Board of County Commissioners.**

It is important to note that this is just a summary of the applicable regulations, and that most of these statutes involve additional requirements. For example, § 7-6-206(3)(c) requires that the full amount of principal and interest of a Certificate of Deposit be covered by federal deposit insurance. That is just one of the many requirements of the statutes. I am quite willing to discuss this matter further with you and the Board of County Commissioners if you or they think it would be helpful.